

Appl. No. : 10/799,529
Filed : March 11, 2004

REMARKS

Applicants sincerely thank the Examiner for the courtesy she extended to Applicants' representative during the telephonic interview of December 13, 2007, during which proposed claim amendments and arguments were discussed.

Applicants have amended claims 1-3, 29, 40-43, 45-47, and 59-61. Claims 48-51 remain withdrawn as they are drawn to non-elected species, although Applicants have amended claims 48-50 to reconcile their language with the amendments made to the pending claims. Applicants maintain that claims 48-51 will be considered once the Examiner finds the generic claim directed to their subject matter to be patentable. Applicants have cancelled claim 5 without prejudice to, or disclaimer of, the subject matter contained therein. Accordingly, claims 1-4, 6-21, 29-33, 40-47, 52, and 59-62 remain pending, while claims 48-51 remain withdrawn.

Applicants respectfully submit that the amendments to the claims are fully supported by the specification as originally filed and do not introduce any new matter. Support for the claim amendments is found throughout the specification, and specifically at, for example,:

- Paragraph [0044], for the phrase "aerobic fermentation supernatant," where the aerobic fermentation process, followed by centrifugation to obtain the supernatant, is described.
- the now-cancelled claim 5, for the limitation in claims 1, 60, and 61 directed to "fermenting under aerobic conditions".
- Paragraph [0044], for the centrifugation step in claim 1.

Applicants have reviewed the Examiner's objections and rejections set forth in the Final Office Action of November 1, 2007 and fully respond below.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 16-18, 29-33, and 59-61, 7, and 16 stand rejected under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. The Examiner alleges that the term "post-fermentation mixture" is not sufficiently described in the specification as initially filed.

Applicants have amended claims 1-3, 29, 40-43, 46-50 and 59-61 by replacing the phrase "post-fermentation mixture" with "aerobic fermentation supernatant" to better describe the

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product obtained from the fermentation process. Applicants respectfully submit that the new phrase is fully described in the specification as initially filed. For example, at Paragraph [0044] the specification discloses “the compositions comprise an aerobic yeast fermentation supernatant combined with surface-active agents.” This paragraph then continues with describing the aerobic fermentation process, the method of obtaining the fermentation broth, centrifuging the same, and obtaining the supernatant. Paragraphs [0045]-[0047] and [0064]-[0066] describe alternative embodiments of obtaining an aerobic fermentation supernatant.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 112, first paragraph.

Rejections under 35 U.S.C. § 102(b)

Claims 1, 2, 6-8, 10-17, 29-33, 59, and 60 stand rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by Battistoni et al. (USP 3,635,797). The Examiner, however, has found that claims 3-5, 9, 18-21, 40-47, 52, 61, and 62 are directed to allowable subject matter.

Applicants certainly agree with the Examiner that Battistoni does not disclose the limitations of the aforementioned allowable claims because, *inter alia*, Applicants respectfully maintain their previous position that Battistoni does not disclose all of the elements of any of the pending claims. The allowable claims include claim 5, which is directed to an aerobic fermentation process. Applicants agree with the Examiner that Battistoni does not disclose an aerobic fermentation process.

Applicants have amended claims 29 and 59, the two independent claims, to recite that the fermentation supernatant is obtained from an aerobic fermentation process. This limitation was previously recited in the now-cancelled claim 5, which the Examiner had found to be allowable.

Because at least one element of the currently pending claims, i.e., the aerobic fermentation process and the supernatant obtained therefrom, is not present in the cited references, Applicants respectfully submit that the pending claims are not anticipated by the cited reference. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 102(b).

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Withdrawn Claims

Claims 48-51 remain withdrawn for being directed to non-elected species. Applicants respectfully submit that the pending claims are allowable. Therefore, Applicants respectfully request that the Examiner consider the allowability of the subject matter of the withdrawn claims.

CONCLUSION

Applicants have amended claims 1-3, 29, 40-43, 45-47, and 59-61 and have cancelled claim 5. Claims 48-51 remain withdrawn. Accordingly, claims 1-4, 6-21, 29-33, 40-47, 52, and 59-62 remain pending, while claims 48-51 remain withdrawn.

Applicants have endeavored to respond to all of the Examiner's objections and rejections set forth in the Final Office Action of November 1, 2007. Applicants respectfully submit that the claims as amended herewith are patentable and request a notice to that effect.

No fee is believed due in connection with this response. Applicants invite the Examiner to call the undersigned if any issue can be resolved through a telephonic discussion.

Respectfully submitted,

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